

P-421/EM-89-1105 APPROVING REFUND PLAN, DENYING PROPOSAL TO CHARGE FOR  
TELEPHONE DIRECTORIES, AND INITIATING INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of a Proposal by Northwestern Bell Telephone Company to Begin Charging for Telephone Directories and to Make Refunds for Charges Collected in Error

ISSUE DATE: August 30, 1990

DOCKET NO. P-421/EM-89-1105

In the Matter of a Commission Initiated Investigation into the Provision of Telephone Directories

DOCKET NO. P-999/CI-90-590

ORDER APPROVING REFUND PLAN,  
DENYING PROPOSAL TO CHARGE FOR  
TELEPHONE DIRECTORIES, AND  
INITIATING INVESTIGATION

**PROCEDURAL HISTORY**

On November 22, 1978, the Commission issued an order requiring Northwestern Bell Telephone Company (NWB or the Company) to provide its customers with any Minnesota telephone directory the customer requested, "free of charge and without delivery charge." In the Matter of a Petition from Northwestern Bell Telephone Company for Authority to Change Certain of its Rates for Telephone Service Furnished to its Customers in the State Of Minnesota, Docket No. P-421/GR-77-1509, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (November 22, 1978) at page 57.

During Fall, 1989, Commission Staff began discussions with Northwestern Bell Telephone Company (NWB or the Company) staff regarding an apparent departure from the Commission's November 22, 1978 Order.

On December 13, 1989, the Company filed a request to be relieved of the requirement to provide free directories. The request also stated that a refund plan for directory charges made in error would be filed in the future.

On April 26, 1990, the Company filed a proposed refund plan.

On May 9, 1990, the Office of the Attorney General (OAG) filed a letter in support of the refund.

On June 4, 1990, the Minnesota Department of Public Service (the Department) filed its Report of Investigation.

On June 26, 1990, the Company filed a response to the Department's report.

On July 9, 1990, the Department filed supplementary comments.

On July 24, 1990, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **Background to the Free Directory Requirement**

Prior to the Company's 1978 rate case, the Company was not authorized to charge its customers for calls to Directory Assistance. In that rate case (Docket No. P-421/GR-77-1509), the Department of Public Service recommended that the Commission authorize the Company to charge for Directory Assistance (DA) on an 18 month experimental basis subject to specified certain conditions or limitations on the Company's authority. One of those conditions was that the Company would provide its customers with any requested Minnesota telephone directory without charge. In its Order granting the Company conditional authority to charge for DA calls, the Commission specifically noted that the Company supported the Department's proposal throughout the proceeding. In the Matter of a Petition from Northwestern Bell Telephone Company for Authority to Change Certain of its Rates for Telephone Service Furnished to its Customers in the State Of Minnesota, Docket No. P-421/GR-77-1509, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (November 22, 1978) at page 57.

After the Company submitted reports regarding its implementation of this 1978 experimental DA plan, the Commission authorized charging for DA on a permanent basis but maintained the requirement that the Company provide its customers with directories from outside their calling area upon request and free of charge. In the Matter of a Tariff Filing Which Would Change the Directory Assistance Service Tariff From an Experimental Service Offering to a Regular Service Offering, Docket No. P-421/M-80-482, ORDER (June 16, 1981).

### **Duration of Order Violation / Immediate Background of Petition**

On August 1, 1987, in violation of the Commission's Order, the Company began charging its customers for directories they requested that were published by other telephone companies.

On January 1, 1989, likewise in violation of the Commission's Order, the Company began charging customers for directories outside the customer's calling area, but published by the Company.

On November 1, 1989, after being contacted by Commission Staff regarding this subject, the Company stopped charging customers for these directories and on December 13, 1989 the Company filed the instant petition.

### **A Refund is Warranted**

The Company proposes to refund of all the money it charged its customers in violation of the Commission's 1978 Order. The Commission agrees that a refund is in order. The Company's action in charging for what was supposed to be a free service was tantamount to an unauthorized price increase. When such violations occur, refunds are normally required. The Commission finds no reason to depart from that principle in this case.

### **The Company's Refund Plan is Reasonable**

The Company's refund plan proposes to determine the total amount to be refunded and the amount that each refund recipient receives as follows:

#### **1. Total Amount to be Refunded**

- a. From the Sale of NWB Directories  
(January 1 - October 31, 1989)

The Company has established the exact amount of revenues obtained from the sale of NWB directories during the period January 1, 1989 to October 31, 1989 based on specific billing information for that period. This amount, plus interest and taxes, will be refunded.

- b. From the Sale of non-NWB Directories  
(August 1, 1987 - October 31, 1989)

The Company must estimate the amount of revenue it received from the sale of non-NWB directories. The Company has records of these sales in 1989 (January 1 - October 31, 1989) but has none for the prior months when it was selling non-NWB directories. Therefore, the Company has estimated the amount of revenues for the entire 17 month period for which it does not have records (8/1/87 - 1/1/89) by taking the average monthly amount collected from customers for non-NWB directories during the January 1 to October 31, 1989 period and multiplying this figure by 17 (the number of months that the Company charged for non-NWB directories, i.e. from August 1, 1987 to December 31, 1988).

## **2. Refund Amounts for Individual Refund Recipients**

### **a. Purchasers of NWB Directories**

Company records adequately identify the individuals who purchased the NWB directories during the period January 1 - October 31, 1989 and these individuals will be refunded the exact amount they paid, plus interest and taxes.

### **b. Purchasers of non-NWB Directories**

In the absence of records indicating the identity of purchasers during the August 1, 1987 - December 31, 1988 period, the Company proposes to refund the entire amount of estimated revenues to customers who ordered non-NWB directories for the period January 1, 1989 through October 31, 1989, based on the number of non-NWB directories they ordered during the period for which the Company has records, January 1 - October 31, 1989. The Company's proposed method of determining identity of refund recipients and the refund amount that each will receive is based on its experience that many customers are repeat users of the non-NWB directories.

The Commission finds that the Company's refund plan is reasonable under the circumstances and will approve it. The Company will commence the refund within 45 days of this Order and file a report on the refund within 45 days after the refund is completed.

## **Commission Policy Requiring Provision of Telephone Directories**

By rule, the Commission requires all telephone companies to distribute their own telephone book to all customers served by that directory free of charge. Minn. Rules, part 7810.2900. The Company does not object to this rule, but to the additional requirement that it provide its customers with a free copy of any Minnesota directory upon request.

The Commission's 1978 decision to impose the additional requirement on the Company was an integral part of its decision to allow the Company to charge for Directory Assistance (DA). While allowing the Company to charge for Directory Assistance calls, the Commission mitigated the impact on customer costs and access to telephone numbers by providing customers with a no-cost alternative method of obtaining telephone numbers, i.e free foreign directories.

The Company argues that significant changes in the industry since the Commission imposed this requirement render its continuation inappropriate and unjust. The Company notes that the 1978 Order was issued before divestiture, when the Company provided both local service and long distance service. Since divestiture

(January 1, 1984), the Company no longer provides interLATA toll calling within Minnesota and calls to DA outside a customer's area code are provided by Interexchange Carriers (IXCs). The Company further asserts that it is discriminatory to impose a free directories requirement on it when the IXCs and other local exchange carriers (LECs) are authorized to charge for DA but are not required to furnish directories for areas outside their service boundaries free of charge.

The Commission is not prepared, on the basis of the present record, to release the Company from the free foreign directory requirement at this time. The purpose of the requirement, to provide the large majority of Minnesota telephone customers with an economical means of obtaining telephone numbers for their inter-calling area calls, is sound. In addition, the Company's claim that the Commission is discriminating against it by imposing this requirement on it and no other telephone companies is without weight.

The statute alluded to (Minn. Stat. § 237.09) is a check on telephone company action, not on Commission discretion. The statutory prohibition against discrimination requires telephone companies to charge all its customers the same rates "for like and contemporaneous intrastate service under similar circumstances." Minn. Stat. § 237.09. Clearly the statute has no application to the Commission's responsibility to establish conditions for the provision of telephone service that serve the public interest. Moreover, the Company has not been harmed in any way by being the only telephone company subject to this requirement. In the 1978 rate case that produced this requirement, the Company sought and obtained authorization to charge rates which not only took into consideration the Company's revenue from charging for DA but also allowed it to recover all expenses incurred in providing the "free" directories. From that date to this, the Company has recovered the cost of providing free foreign directories.

In these circumstances, rather than abandon the free directories requirement at this time, the Commission will initiate an investigation regarding the provision of telephone directories<sup>1</sup>.

To provide the Commission with a factual basis for addressing its policy regarding the provision of telephone directories, the Commission will direct the Minnesota Department of Public Service (the Department) to work with Commission Staff to design an industry wide study. Issues to be addressed in the study will include:

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<sup>1</sup> The case title and docket number assigned to this new matter are as follows: In the Matter of a Commission Initiated Investigation into the Provision of Telephone Directories, Docket No. P-999/CI-90-590.

1. Is the provision of telephone number information a part of local telephone service? of adequate service within a customer's LATA? of adequate statewide service?
2. How can telephone number identification be provided to telephone customers? through DA? directories? other methods? Are directories used for purposes other than obtaining telephone number information?
3. Should telephone number information be provided without additional charge within a customer's local calling area? within a customer's LATA? within a customer's area code? statewide? Should at least one option of obtaining telephone number information be available without charge?
4. What is the current practice of LECs with regard to the provision of telephone directories? What directories (local exchange, EAS, etc.) are provided? Are these directories free of separate charge?
5. What is the cost of providing directories for each local calling area? What is the basis for this cost? Are the costs reasonable? Who publishes the directories? For directories published by affiliate companies, are directories provided to telephone companies at publishing cost? at publishing cost plus mark-up?
6. Are there other available local exchange directories provided by non-telephone companies? Are these directories free of charge? What are the similarities/differences between directories provided by the LECs and by non-telephone companies? Are the costs comparable?
7. What is the current practice of long distance service providers with regard to the provision of telephone directories? What directories are provided?
8. Should long distance providers be required to provide directories for areas outside the customers' local calling area? Should the directories be free of charge?
9. What is the relationship between directory assistance and the provision of telephone directories by LECs? by long distance companies?
10. Do current LEC tariffs reflect any uniform policy with regard to the provision of directories?

11. What is the appropriate Commission policy for the provision of directories? Should the provision of directories be tariffed? How many directories should be provided to an individual subscriber without separate charge? Up to what level (i.e. statewide) should provision of directories be without separate charge? Should there be any exemptions to directory charges?
12. Do current local rates include a cost element for the provision of directories without separate charge? Should the revenues derived from the sale of directories be included in setting local rates? Should local rates be changed if a change is made in the provision of directories outside a rate case?
13. Should a foreign exchange (FX) customer receive a directory without additional charge for the exchange to which the customer has FX service?
14. Is a rule change needed to implement ultimate Commission policy?

Once this investigation has been completed, the Commission will examine its options. For example, the Commission may determine that requiring the provision of free foreign directories is inappropriate in light of divestiture, the cost causer/cost payer principle or other considerations. On the other hand, the Commission may decide to extend the free foreign directory requirement industry wide, or abandon this particular requirement and adopt new approaches to pursue its goal.

### **ORDER**

1. Northwestern Bell Telephone Company's plan to refund for telephone directory charges collected in error is approved.
2. Northwestern Bell Telephone Company shall commence its refund within 45 days of the date of this Order.
3. Within 45 days after the refund is complete, Northwestern Bell Telephone Company shall file a report with the Commission and the Department of Public Service regarding the refund.
4. Northwestern Bell Telephone Company' request to begin charging for directories outside of a customer's local calling area is denied without prejudice.
5. A Commission investigation regarding the provision of telephone directories is hereby initiated and assigned  
Docket No. P-999/CI-90-590.



6. All Minnesota local exchange telephone companies and all interexchange telephone companies operating in Minnesota shall file with the Department of Public Service and serve upon each other written responses to the fourteen study questions listed herein within 30 days of the date of this Order.
7. The Minnesota Department of Public Service shall conduct its study and file its report thereon within 120 days of the date of this Order.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)